



The Education of Students with Disabilities: Alignment Between the Elementary and Secondary Education Act and the Individuals with Disabilities Education Act

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Summary

The largest sources of federal funding for elementary and secondary education are the Elementary and Secondary Education Act (ESEA), as amended by the No Child Left Behind Act (NCLB; P.L. 107-110), and the Individuals with Disabilities Education Act (IDEA; P.L. 108-446). The ESEA provides funding and services for a broad population of students, including disadvantaged students, migrant students, neglected and delinquent students, and students with limited English proficiency. Approximately 6 million students with disabilities ages 6 through 21 attend elementary and secondary schools; however, they are not afforded special services under the ESEA due to their disability status. The IDEA provides funding and services specifically for those students with disabilities. Both the ESEA and IDEA aim to improve the educational outcomes for students with disabilities. The ways in which they do this sometimes differ, and when the laws are not fully or clearly aligned it can be difficult for educators to plan and execute an appropriate education for students with disabilities.

In the 112th Congress, legislators may consider the reauthorization of the ESEA. This report focuses on four broad policy issues within both the ESEA and IDEA, which potentially create differing expectations or requirements for schools and teachers educating students with disabilities:

- **Standards.** Under the ESEA, students with disabilities are taught to state academic content standards that apply to all children in the state. Under the IDEA, academic goals are established for each child in an individualized education program (IEP).
- **Assessments.** Under the ESEA, students with disabilities participate in annual assessments that determine adequate yearly progress toward meeting expectations associated with state academic content and achievement standards. Under the IDEA, students with disabilities are assessed for identification purposes and for monitoring progress toward meeting goals articulated in their IEPs.
- **Accountability.** The ESEA accountability system primarily measures whether schools and local education agencies are making adequate yearly progress in reading and mathematics achievement. The “students with disabilities” subgroup is expected to make adequate yearly progress. The IDEA monitoring system measures whether states are meeting certain compliance and performance indicators to determine whether the law is being implemented as intended.
- **Teachers.** Both the ESEA and IDEA have requirements regarding “highly qualified” teachers. The ESEA includes a definition of “highly qualified” teacher as the term relates to teachers of elementary and secondary education. The IDEA also includes a definition of “highly qualified” teacher as the term relates to *special education* teachers of elementary and secondary education. Because students with disabilities spend the majority of time in the general education classroom, they are affected by both definitions.

This report highlights issues pertaining to alignment and misalignment among ESEA and IDEA provisions within these areas, describes how statutory and regulatory language has sought to clarify these issues, and addresses specific issues that Congress may want to clarify as it considers the reauthorization of ESEA.

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Introduction

The largest sources of federal funding for elementary and secondary education are the Elementary and Secondary Education Act (ESEA), as amended by the No Child Left Behind Act (NCLB; P.L. 107-110), and the Individuals with Disabilities Education Act (IDEA; P.L. 108-446). In FY2011, the ESEA provided approximately \$24.4 billion in funding for education, representing roughly 65% of all federal elementary and secondary education funding.¹ Title I of the ESEA is the largest ESEA program, providing support for the education of disadvantaged students. Over the past two decades, the ESEA has become increasingly focused on promoting educational standards and accountability to help ensure that students in schools receiving Title I funds are consistently held to state developed educational standards, and that these same standards are applied to all groups of students. The ESEA contains high stakes accountability provisions featuring varied consequences² for schools in which a sufficient percentage of students or subgroups of students fail to make academic progress in relation to the standards.

In FY2011, the IDEA provided approximately \$12.5 billion in funding for the education of students with disabilities, representing roughly 33% of all federal elementary and secondary education funding.³ The IDEA focuses on ensuring that all elementary and secondary students with disabilities receive a free appropriate public education (FAPE). Part B of the IDEA is the largest program, providing special education and related services to students with disabilities from preschool through high school and ensuring that these students receive an individualized education that is tailored to their needs. IDEA has accountability provisions that are largely focused on ensuring that states comply with various provisions of the law. The IDEA accountability system also requires states to report on various performance indicators that pertain to the academic progress of students with disabilities, but, unlike the ESEA, uniform levels of achievement are not expected.

Approximately 6 million students with disabilities attend elementary and secondary schools.⁴ While nearly all students with disabilities are educated to some extent in the general education classroom,⁵ almost 60% of students with disabilities spend over 80% of their time in the general education classroom.⁶ Since many students with disabilities participate in the general education classroom, they often have the same educational experiences as their non-disabled peers. For example, they are taught to the same academic content standards, in the same classrooms, and by the same teachers. They often take the same annual assessments in reading and mathematics. The educational experiences that students with disabilities share with their non-disabled peers are

¹ For more information on elementary and secondary education funding, see U.S. Department of Education (ED), Summary of Discretionary Funds, FY2008-FY2012 President's Budget: <http://www2.ed.gov/about/overview/budget/budget12/summary/appendix1.pdf>. Other sources of federal funding for elementary and secondary education in FY2011 include the State Fiscal Stabilization Fund, career and technical state grants, and "other K-12."

² For more information on the ESEA accountability system, see CRS Report R41533, *Accountability Issues and Reauthorization of the Elementary and Secondary Education Act*, by Rebecca R. Skinner and Erin D. Lomax and CRS Report RL32495, *Adequate Yearly Progress (AYP): Implementation of the No Child Left Behind Act*, by Rebecca R. Skinner.

³ See footnote 1.

⁴ See Data Accountability Center, Part B Child Count (2009), Table 1-3 available at <http://www.ideadata.org>.

⁵ See Data Accountability Center, Part B, Educational Environment (2009), Table 2-2 available at <http://www.idea.org>.

⁶ 58.41% of students with disabilities spend at least 80% of their time in the regular education classroom. See footnote 5.

typically guided by policies set forth in the ESEA. Students with disabilities also have educational experiences that are unique to them and are not shared by their non-disabled peers. For example, they are provided individualized education programs (IEPs) that outline the provision of special education and related services. They are taught by special education teachers and related service providers, such as speech pathologists, audiologists, occupational therapists, and others. Sometimes, students with disabilities take alternate assessments in reading and mathematics instead of the general state assessment.⁷ The individualized educational experiences of students with disabilities are typically guided by policies set forth in the IDEA.⁸

Both the ESEA and the IDEA affect the education of students with disabilities and aim to improve educational outcomes for these students. While the goals of the two laws may be similar, the ESEA and the IDEA support students with disabilities differently. In particular, some tension exists with regard to expectations for student learning. Under ESEA, the emphasis is placed on holding all students and all subgroups of students (i.e., “students with disabilities”) to the same academic standards, closing gaps between subgroups of students, and expecting 100% proficiency on assessments of reading and mathematics. Under IDEA, the emphasis is placed on assessing individual students, establishing individualized learning goals, and monitoring progress toward meeting these goals.

When the underlying concepts or legislative language of the ESEA and IDEA are not clearly aligned, it can be difficult for educators to plan and execute an appropriate education for students with disabilities. One example of possible misalignment concerns *what* to teach students with disabilities. Under ESEA, general education teachers are expected to teach to grade-level standards to students with disabilities. Under IDEA, special education teachers are expected to teach to individualized goals developed for each student with a disability. The individualized goals developed under the IDEA may not be aligned with the grade-level standards under ESEA. Another example of potential misalignment concerns high school graduation rates. While both ESEA and IDEA require states to report graduation rates for students with disabilities, IDEA allows for a longer period of time to complete high school graduation requirements than is generally allowed under the “four-year” graduation rate reported under the ESEA.

The purpose of this report is to highlight issues of alignment and possible misalignment between the two laws, to describe how statutory and regulatory language has sought to clarify these issues, and to draw attention to issues that Congress may want to clarify. For the purpose of this report, *alignment* refers to the extent to which the ESEA and IDEA have similar conceptual aims and compatible statutory or regulatory language. *Misalignment* refers to the extent to which ESEA and IDEA have conflicting conceptual aims, conflicting statutory or regulatory language, or introduce specific issues that present difficulties in implementing provisions of both laws simultaneously. Where possible misalignment exists, this report explores the potential consequences of dual implementation of the requirements of the ESEA and the IDEA.

While this report provides some relevant background information on the ESEA and the IDEA, it does not serve as a comprehensive resource on the basic provisions of these laws. Background information on the ESEA and the IDEA is available in other reports.⁹ In addition, some of the

⁷ Alternate assessments are discussed in a later section of this report. For more information, see CRS Report R40701, *Alternate Assessments for Students with Disabilities*, by Erin D. Lomax.

⁸ Students receive special education and related services covered by the IDEA in both the general education classroom and the special education classroom.

⁹ For background information on the ESEA, see CRS Report RL33960, *The Elementary and Secondary Education Act*, (continued...)

provisions of the ESEA may be affected by waivers issued by the Secretary of Education (hereafter referred to as the Secretary). In September 2011, the Secretary announced that states may request flexibility on specific ESEA requirements in exchange for certain changes in state-developed plans that are designed to improve educational outcomes, close achievement gaps, increase equity, and improve the quality of instruction.¹⁰ It is not known at this time how the waivers would affect interactions between ESEA and IDEA. The focus of this report, therefore, remains on the statutory and regulatory provisions of the ESEA and how they align with the statutory and regulatory provisions of the IDEA. It does not anticipate potential changes due to the issuance of waivers.

This report is organized around four broad education policy issues that are relevant to both the ESEA and IDEA: standards, assessments, accountability, and teachers. The first three education policy issues are interrelated and comprise the ESEA accountability system. That is, states set academic *standards* for students, *assessments* measure whether students are achieving these standards, and the assessment scores inform the ESEA *accountability* system to determine whether certain goals are being met. The fourth policy issue, teachers, is not directly related to the overall accountability system, but it has important implications for the education of students with disabilities. In particular, the “highly qualified” teacher requirements of the two laws are examined to explore whether the requirements further the goal of meeting the needs of students with disabilities. In addition, this section examines the increasing emphasis on teacher effectiveness and how this may affect students with disabilities. For each policy issue, background information on the relevant statutory and regulatory language of ESEA and IDEA is provided. Then, there is a discussion of alignment, possible areas of misalignment, and specific issues that Congress may want to clarify during the reauthorization debate of the ESEA.

Appendix A presents a glossary of selected acronyms used in this report.

Standards¹¹

Standards are a set of expectations of certain skills and knowledge for students at a particular grade level or developmental level. Recent federal policies have supported standards-based education in an effort to promote equity in academic expectations for all students.¹² In elementary and secondary education, “standards” typically refer to grade-level academic content and achievement standards that are required by the ESEA. State academic content and achievement standards are intended to ensure that all students, including students with disabilities, have access to and make progress in the general education curriculum. In addition to the state academic

(...continued)

as *Amended by the No Child Left Behind Act: A Primer*, by Rebecca R. Skinner; for background information on the IDEA, see CRS Report R41833, *The Individuals with Disabilities Education Act (IDEA), Part B: Key Statutory and Regulatory Provisions*, by Ann Lordeman.

¹⁰ For more information on the Secretary’s announcement and to see details of the waiver package, see <http://www.ed.gov/esea/flexibility>.

¹¹ This section draws on reports previously written by Rebecca Skinner. For more information on academic standards in the ESEA, see CRS Report RL33960, *The Elementary and Secondary Education Act, as Amended by the No Child Left Behind Act: A Primer*, by Rebecca R. Skinner and CRS Report R41533, *Accountability Issues and Reauthorization of the Elementary and Secondary Education Act*, by Rebecca R. Skinner and Erin D. Lomax.

¹² For information on the federal government’s role in the standards-based reform movement, see CRS Report R41533, *Accountability Issues and Reauthorization of the Elementary and Secondary Education Act*, by Rebecca R. Skinner and Erin D. Lomax.

content and achievement standards, students with disabilities are taught the individualized skills and goals outlined by their IEP as required by the IDEA. In a broad sense, IEP goals can be viewed as a set of individualized “standards” for a student with a disability.

The following section provides background information on the relevant statutory and regulatory language that describes the academic content and achievement standards in the ESEA and IEP goals in the IDEA. This discussion is followed by an analysis of how the two sets of standards are used to guide instruction for students with disabilities and a discussion of alignment options that Congress may consider.

Background

Title I-A of the ESEA requires states to develop a set of academic content and achievement standards in mathematics, reading or language arts (hereafter referred to as reading), and science.¹³ The academic content and achievement standards are to be used by the state and its local educational agencies (LEAs) and apply to all public schools and children in the state.¹⁴ The academic content standards are required to “(1) specify what children are expected to know and be able to do; (2) contain coherent and rigorous content; and (3) encourage the teaching of advanced skills.”¹⁵ The academic achievement standards are required to be aligned¹⁶ with academic content standards and describe at least three levels of achievement (e.g., basic, proficient, and advanced).¹⁷

The statutory language of the ESEA specifies that the standards “shall include the same knowledge, skills, and levels of achievement expected of all children.”¹⁸ This requirement implies that the academic content and achievement standards apply to all students with disabilities regardless of the type or severity of the disability. Subsequent regulations, however, have allowed states to develop different sets of academic achievement standards for some students with disabilities.¹⁹ Although the majority of students with disabilities are taught to grade-level content and achievement standards, regulations permit states to develop *alternate achievement standards* and *modified achievement standards* for some students with disabilities.

¹³ ESEA, §1111(b)(1). A *content standard* specifies what all students should know and be able to do. An *achievement standard* is a predetermined level of performance that denotes proficiency within or mastery of a given content area.

¹⁴ This report specifically discusses provisions of the ESEA and IDEA that are relevant to public schools.

¹⁵ ESEA, §1111(b)(1)(D)(i).

¹⁶ The ESEA uses the word “align” with respect to standards and assessments. ESEA’s use of the word “align” should not be construed to imply alignment between the ESEA and the IDEA. In this report, alignment between the ESEA and the IDEA is specifically discussed under the headers of “Alignment Issues.”

¹⁷ Academic achievement standards may describe more than three levels of achievement as long as they describe two levels of high achievement (proficient and advanced) and one level of lower achievement that describes how students are progressing toward achieving proficiency in the standards.

¹⁸ ESEA, §1111(b)(1)(C).

¹⁹ 34 CFR §200.1(d) and §200.1(e). Note that the regulations do not specify that states may develop different *content* standards for some students with disabilities; the regulations specify that states may develop different *achievement* standards. Non-regulatory guidance, however, has further specified that “grade-level content may be reduced in complexity or modified to reflect pre-requisite skills” (see <http://www2.ed.gov/policy/elsec/guid/altguidance.pdf>). In effect, the content standards may be modified for a small subset of students with disabilities (i.e., students with the most significant cognitive disabilities).

Alternate achievement standards may be developed for students with disabilities²⁰ who have the “most significant cognitive disabilities.”²¹ If a state chooses to develop alternate achievement standards, the state must use a “documented and validated standards-setting process” to ensure that alternate achievement standards are aligned with the state’s academic content standards, promote access to the general curriculum, and reflect professional judgment of the highest achievement standards possible. While any number of students may be taught to alternate achievement standards, there is a limit to the number of state assessments based on alternate achievement standards that can be counted as proficient in a state’s accountability system.²²

Modified achievement standards may be developed for students with disabilities²³ whose disability has “precluded the student from achieving grade-level proficiency” as demonstrated by the state assessment or other assessments that provide valid results on student achievement.²⁴ If a state chooses to develop alternate achievement standards, the standards must (1) be aligned with the state’s academic content standards for the grade level in which the student is enrolled, (2) be challenging for eligible students, but may be less difficult than the grade-level academic achievement standards, (3) include at least three achievement levels, and (4) be developed through a documented and validated standards-setting process that includes broad stakeholder input. While any number of students may be taught to modified achievement standards, there is a limit to the number of state assessments based on modified achievement standards that can be counted as proficient in a state’s accountability system.²⁵

Under IDEA, a student with a disability is taught according to his or her IEP. The IEP²⁶ is a written document provided for each student with a disability to ensure that the student is receiving FAPE.²⁷ The IEP document includes details about the student and information on the specific special education and related services that are provided to the student. One of the features of the IEP is a statement of annual goals, including academic and functional goals, designed to (1)

²⁰ As defined by IDEA, §602(3).

²¹ Students with the “most significant cognitive disabilities” are not defined by the ESEA or the IDEA. According to non-regulatory guidance, the term “most significant cognitive disability” was not intended to create a new category of disability. ED intended that “the term ‘students with the most significant cognitive disabilities’ include that small number of students who are (1) within one or more of the existing categories of disability under the IDEA (e.g., autism, multiple disabilities, traumatic brain injury, etc.); and (2) whose cognitive impairments may prevent them from attaining grade-level achievement standards, even with the very best instruction” (see page 23 of <http://www2.ed.gov/policy/elsec/guid/altguidance.pdf>). States are responsible for defining “most significant cognitive disability” and establishing criteria for identification.

²² Only 1% of scores from state assessments based on alternate achievement standards may count as proficient in a state’s accountability system. Therefore, it is likely that an estimated 1% of all students (representing 9% of students with disabilities nationwide) would be taught to alternate achievement standards.

²³ As defined by IDEA, §602(3).

²⁴ See 34 CFR §200.1(e).

²⁵ Only 2% of scores from state assessments based on modified achievement standards may count as proficient in a state’s accountability system. Therefore, it is likely than an estimated 2% of all students (representing approximately 20% of all students with disabilities) would be taught to modified achievement standards.

²⁶ Requirements of the IEP are outlined in IDEA, §614.

²⁷ The term “free appropriate public education,” or FAPE, is defined in IDEA, §601(9) as “special education and related services that—(A) have been provided at public expense, under public supervision and direction, and without charge; (B) meet the standards of the state educational agency; (C) include an appropriate preschool, elementary school, or secondary school education in the state involved; and (D) are provided in conformity with the individualized education program required under section 614(d) [Individualized Education Program (IEP)].” For more information on FAPE, see CRS Report R41833, *The Individuals with Disabilities Education Act (IDEA), Part B: Key Statutory and Regulatory Provisions*, by Ann Lordeman.

enable the child to be involved in and make progress in the general education curriculum, and (2) meet each of the student’s other educational needs that result from the student’s disability.

IEP goals are determined by the student’s IEP team, which includes general education teachers, special education teachers, parents, and others.²⁸ IEP goals are individualized for the student and may be academic, address social or behavioral needs, relate to physical needs, or address other educational needs. Academic goals often focus on the content areas of reading and mathematics. Social and behavioral goals may focus on increasing social skills that promote positive peer relationships or decreasing problem behaviors that inhibit learning. Sometimes, students with disabilities have IEP goals that relate to physical needs in the classroom, such as using scissors, gripping a pencil, typing, and other fine-motor skills.

IEP goals are determined annually and represent what the student may reasonably accomplish in one year.²⁹ They must be measurable and the student’s progress toward achieving the goals must be documented. A description of how the student’s progress toward meeting the annual goals will be measured must be included in the IEP, including a description of how often progress will be reported (e.g., quarterly, periodically, concurrent with report cards).

Table 1 provides a comparison of select statutory and regulatory provisions of the ESEA and IDEA discussed above:

Table 1. Comparison of Select Statutory and Regulatory Provisions of the ESEA and IDEA: Standards

| Standards | ESEA | IDEA |
|---|--|---|
| In General | The ESEA requires states to develop a set of academic content and achievement standards in mathematics, reading, and science. The standards apply to all public schools and children in the state. | Under IDEA, a student with a disability is taught according to his or her individualized education program (IEP). IEP goals are determined annually and represent what the student may reasonably accomplish in one year. |
| Alternate and Modified Achievement Standards for Students with Disabilities | Under ESEA, alternate achievement standards may be developed for students with disabilities who have the “most significant cognitive disabilities.” Under ESEA, modified achievement standards may be developed for students with disabilities whose disability has “precluded the student from achieving grade-level proficiency.” | N/A |

Source: Table prepared by CRS based on provisions in the Elementary and Secondary Education Act (P.L. 107-110), the Individuals with Disabilities Education Act (P.L. 108-446), and associated regulations.

Note: Under ESEA regulations, only 1% of scores from state assessments based on alternate achievement standards may count as proficient in a state’s accountability system. Similarly, under ESEA regulations, only 2% of scores from state assessments based on modified achievement standards may count as proficient in a state’s accountability system.

²⁸ IDEA, §614 (d)(1)(B).

²⁹ Although IEP goals are determined annually, they may be rewritten throughout the year to meet the changing needs of a child with a disability.

Alignment Issues

The education of students with disabilities is affected by both the academic content and achievement standards in the ESEA and individualized IEP goals in the IDEA. Standards in the ESEA and IEP goals in the IDEA, however, serve different purposes for tracking the achievement of students with disabilities. Standards in the ESEA are used for federal accountability purposes; states, LEAs, and schools are held accountable for the subgroup of “students with disabilities” achieving proficiency with respect to the standards, in the aggregate. IEP goals in the IDEA are not used for accountability purposes. Data regarding whether students are meeting their IEP goals are used by teachers, parents, and schools to refine the special education and related services that are necessary for meeting those goals. If students are not meeting their IEP goals, the IEP team can revise the goals, revise the type or duration of special education and related services, or discuss alternative educational placements.

For some students with disabilities, the state content and achievement standards may be somewhat aligned with reading and mathematics goals in their IEPs. For example, students with disabilities who are relatively high-achieving may have IEP goals in reading and mathematics that are similar to ESEA grade-level content and achievement standards. In this case, the education of a student with a disability in the general education classroom with instruction provided by the general education teacher may be consistent with other special education and related services that are provided. All service providers (i.e., the general education teacher, special education teacher, and related service providers) are working toward a common goal.

For other students with disabilities, the state content and achievement standards may not be aligned with IEP goals. If there is a lack of alignment between state content and achievement standards and IEP goals, there is potential for confusion over what to teach students with disabilities and what level of mastery should be expected. For example, if a student in fifth grade is reading at a second grade level, his or her IEP goal may require a special education teacher to focus on basic literacy skills that are necessary to move the student from the second grade level to the third grade level. Meanwhile, the student’s general education teacher would continue to teach the fifth grade content standards developed by the state. In this case, the education of a student with a disability may be somewhat disjointed. While the general education teacher teaches to the grade-level content standards of the state, the special education teacher and related service providers may be focused on skills that are below grade-level.

There is little federal guidance on the level of alignment that is expected between content and achievement standards in the ESEA and IEP goals in the IDEA. The only explicit connection between state standards and IEP goals refers to students who are taught to modified achievement standards. Regulations specify that if a student’s IEP includes goals for a subject assessed against modified achievement standards, “those goals must be based on the academic content standards for the grade in which the student is enrolled.”³⁰ There is no analogous requirement for students with disabilities who are taught to alternate achievement standards to have IEP goals aligned with state academic content standards. Moreover, there is no requirement for students with disabilities who are taught to grade-level state content standards to have IEP goals based on those standards.

³⁰ 34 CFR §200.1 (e)(2)(iii).

As Congress considers ESEA provisions regarding state standards, it may also consider how IDEA provisions regarding IEP goals are aligned with the standards:

- **Common vs. differentiated expectations.** The ESEA statutory language specifies that all children shall be held to the same state achievement standards; however, ESEA regulatory language allows states to develop alternate achievement standards and modified achievement standards for some students with disabilities. All states currently have some form of alternate achievement standards in place. In order to align ESEA statutory language with current practice, Congress could authorize the use of alternate achievement standards or modified achievement standards for some students with disabilities. The development and use of alternate achievement standards and modified achievement standards are currently implemented consistent with U.S. Department of Education (ED) regulations regarding possible options for including students with disabilities in the ESEA assessment and accountability system. If Congress chooses to include alternate achievement standards or modified achievement standards in the statute during the reauthorization of ESEA, regulatory language developed by ED could be used as a starting point to outline the requirements of these standards.³¹ If Congress does not authorize the use of alternate achievement standards or modified achievement standards and requires students with disabilities to be taught to grade-level standards, it could lead to more schools and LEAs facing consequences for failing to meet annual achievement targets.³²
- **Alignment of state content and achievement standards with IEP goals.** Statutory language does not require IEP goals under the IDEA to be aligned with state content and achievement standards under the ESEA. Some students with disabilities have IEP goals that address knowledge and skills that are below the state grade-level academic content and achievement standards. Demonstrating alignment between grade-level state standards and IEP goals for some students with disabilities (i.e., students with disabilities that are taught to grade-level standards or modified achievement standards) may be relatively straightforward. Demonstrating alignment between grade-level state standards and IEP goals for students with the most significant cognitive disabilities (i.e., students with disabilities that are taught to alternate achievement standards) may be difficult to achieve, however, because some of these students may have IEP goals that are several grade levels below the state standards or have IEP goals that cover basic, prerequisite academic skills. For students with the most significant cognitive disabilities, Congress could require IEP goals to be aligned with alternate achievement standards (i.e., not aligned with grade-level standards). For other students with disabilities, Congress could require IEP goals to be aligned with grade-level state standards. In either case, if Congress chooses to include alignment language, ESEA regulatory language that requires the alignment of

³¹ See 34 CFR §200.1(d) and (e) for regulatory language outlining the requirements for alternate achievement standards and modified achievement standards.

³² Under the current ESEA accountability system, meeting annual achievement targets is part of determining whether a school, LEA, or state meets adequate yearly progress (AYP). AYP is discussed in a later section of this report, “Accountability.”

modified achievement standards to IEP goals could be used as a model.³³ If state standards and IEP goals are aligned, the education of some students with disabilities would be more consistent across general and special education settings because there would be a common set of expectations for the student. Furthermore, if state standards and IEP goals are aligned, it is more likely that both the general education teacher and special education teacher would be providing instruction on the academic content that would be assessed on the state assessment. If state standards and IEP goals are not aligned, however, it is more likely that the general education teacher and special education teacher would be providing fragmented instruction that may or may not be assessed on the state assessment, which may inhibit students with disabilities from performing as well as possible on these assessments.

Assessments

Educational assessment is a complex endeavor that involves gathering and analyzing data to support decision-making about students and the evaluation of academic programs and policies.³⁴ In recent years, federal education legislation has placed an increased emphasis on assessment in elementary and secondary schools. The ESEA and IDEA both have assessment requirements that affect students with disabilities. Under the ESEA, students with disabilities are required to participate in state assessments used within the federal accountability system.³⁵ The IDEA also requires students with disabilities to participate in state assessments used for federal accountability.³⁶ Under the IDEA, however, students with disabilities also take assessments for a variety of other purposes, such as determining the type and severity of their disabilities and monitoring their progress toward achieving IEP goals.

The following section provides background information on the relevant statutory and regulatory language that describes student assessment in the ESEA and IDEA. This discussion is followed by an analysis of how the purpose of assessment differs between the ESEA and IDEA, an examination of the alignment between the two laws, and a discussion of alignment options that Congress may consider.

Background

Title I-A of the ESEA requires states to develop a set of high-quality, annual academic assessments in mathematics and reading to be administered in grades 3 through 8 and once in high school.³⁷ Results of these assessments are used to determine whether the state and each of its

³³ See 34 CFR §200.1 (e)(2)(iii).

³⁴ For more information on general educational assessment, see CRS Report R40514, *Assessment in Elementary and Secondary Education: A Primer*, by Erin D. Lomax.

³⁵ ESEA, §1111(b)(3)(C)(ix)(I).

³⁶ IDEA, §612(a)(16).

³⁷ States are also required to develop assessments of science achievement to be administered once in each of three grade bands (i.e., grades 3 through 5, 6 through 8, and 9 through 12). Results of the science assessment, however, are not used in the accountability system. For a comprehensive discussion of assessment requirements under Title I of the ESEA, see CRS Report R41670, *State Assessments Required by the No Child Left Behind Act: An Analysis of Requirements, Funding, and Cost*, by Erin D. Lomax.

LEAs are assisting all students in meeting the content and achievement standards established by the state. In practice, the results of state assessments are used within the federal accountability system to determine whether schools and LEAs have made adequate yearly progress (AYP).³⁸

States are required to develop at least one alternate assessment for students with disabilities.³⁹ The requirement that states develop at least one alternate assessment was intended to ensure that all students with disabilities could participate in state assessment and accountability systems, which is required by both the ESEA and the IDEA. There are currently five options for assessing students with disabilities for state accountability purposes: (1) general state assessment, (2) general state assessment with accommodations, (3) alternate assessment based on grade-level standards, (4) alternate assessment based on alternate achievement standards (AA-AAS),⁴⁰ and (5) alternate assessment based on modified achievement standards (AA-MAS).⁴¹ The first three assessment options result in scores that may be counted in AYP calculations in the typical manner, as determined by a state's accountability system.⁴² Scores from the fourth and fifth assessment options (AA-AAS and AA-MAS) have restrictions on the way they may be counted in AYP calculations. These restrictions are outlined in regulations issued by ED and have numerous implications for state accountability systems.⁴³

As mentioned above, the IDEA requires students with disabilities to participate in all district and state assessments. The IDEA statutory language also reinforces the ESEA regulatory language regarding the provision of alternate assessments for students with disabilities.⁴⁴ The IDEA, however, requires various assessments for students with disabilities that are not included in the ESEA. For example, LEAs are required to assess students to determine eligibility for special education and related services by conducting an evaluation which uses “a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information” to determine whether the child is a “child with a disability” and provide information to be used in the writing of the child's IEP.⁴⁵ In addition, the IDEA requires a student's IEP team to use

³⁸ AYP is discussed in a later section of this report, “Accountability.”

³⁹ The requirement that states develop alternate assessments for students with disabilities is not explicitly stated in statutory language; however, regulations on the development of these assessments have made the requirement explicit. For a comprehensive report on alternate assessments, see CRS Report R40701, *Alternate Assessments for Students with Disabilities*, by Erin D. Lomax.

⁴⁰ AA-AAS are provided for students with the “most significant cognitive disabilities.”

⁴¹ AA-MAS are provided for students with disabilities whose disability has “precluded the student from achieving grade-level proficiency” as demonstrated by the state assessment or other assessments that provide valid results on student achievement.

⁴² For more information on the calculation of AYP, see CRS Report RL32495, *Adequate Yearly Progress (AYP): Implementation of the No Child Left Behind Act*, by Rebecca R. Skinner.

⁴³ The restrictions on the use of alternate assessments in accountability systems are discussed in a later section of this report, “Accountability.” Restrictions on the use of alternate assessments in accountability systems are also discussed in CRS Report R40701, *Alternate Assessments for Students with Disabilities*, by Erin D. Lomax.

⁴⁴ IDEA, §612(a)(16)(C)(ii). In addition to requirements regarding the alternate assessment itself, IDEA statutory language specifies that, “if the state has adopted alternate academic achievement standards permitted under the regulations promulgated to carry out section 1111(b)(1) of the Elementary and Secondary Education Act of 1965, [the alternate assessment shall] measure the achievement of children with disabilities against those standards.”

⁴⁵ IDEA, §614(b)(2)(A). While the federal government defines broad disability categories in legislation, the IDEA does not provide operational definitions of each disability. Each state has developed its own operational definition of each disability category, and assessments are used to determine whether a child is a “child with a disability” in that state.

assessments to determine how the student's progress toward meeting the annual IEP goals is measured.⁴⁶

One of the ESEA requirements of state assessment systems relevant to students with disabilities is that such systems provide for "reasonable" accommodations for students who have been identified with a disability under the IDEA.⁴⁷ An accommodation is a change in the testing material or administration procedures that enable students with disabilities to participate in the assessment.⁴⁸ The intent of an accommodation is to remove the influence of a student's disability to the greatest extent possible so that the student may demonstrate his or her true level of achievement. ESEA regulations specify that a state assessment system must provide "appropriate accommodations that the student's IEP team determines are necessary to measure the academic achievement of the student relative to the state's academic content and achievement standards ..."⁴⁹

Like the ESEA, the IDEA addresses the use of accommodations for assessment. To remain eligible for IDEA funding, a state must provide assurances to the Secretary that the state has developed guidelines for the provision of appropriate accommodations.⁵⁰ In addition, IDEA statutory language requires the IEP team to select accommodations and provide a written statement about any individually appropriate accommodations that are necessary to measure the academic achievement and functional performance of students with disabilities on state and district assessments.⁵¹ IDEA regulations further specify that each state must issue guidance that (1) identifies only those accommodations for each assessment that do not invalidate the score, and (2) instructs the IEP team to select only those accommodations that do not invalidate the score.⁵²

Table 2 provides a comparison of select statutory and regulatory provisions of the ESEA and IDEA discussed above:

⁴⁶ IDEA, §614(d)(1)(A)(i)(III).

⁴⁷ ESEA, §1111(b)(3)(C)(ix). Accommodations are also provided for students who are not identified as a "child with a disability" under IDEA but who qualify under Section 504 of the Rehabilitation Act of 1973. Students who qualify for accommodations under Section 504 are beyond the scope of this report. For more information on Section 504 of the Rehabilitation Act, see CRS Report RL34041, *Section 504 of the Rehabilitation Act of 1973: Prohibiting Discrimination Against Individuals with Disabilities in Programs or Activities Receiving Federal Assistance*, by Emily C. Barbour.

⁴⁸ Assessment accommodations are often grouped into five categories: (1) presentation (e.g., repeat directions, read aloud, large print, Braille), (2) equipment and materials (e.g., calculator, amplification equipment, manipulatives), (3) response (e.g., mark answers in book, scribe records response, point), (4) setting (e.g., study carrel, student's home, separate room), and (5) timing/scheduling (e.g., extended time, frequent breaks).

⁴⁹ 34 CFR §200.6(a). States are also required to develop, disseminate information on, and promote the use of appropriate accommodations. For more information on states' accommodation policies, see <http://www.cehd.umn.edu/NCEO/TopicAreas/Accommodations/StatesAccomm.htm>.

⁵⁰ IDEA, §612(a)(16)(B).

⁵¹ IDEA, §614(d)(1)(A)(i)(VI)(aa).

⁵² 34 C.F.R. §300.160(b).

Table 2. Comparison of Select Statutory and Regulatory Provisions of the ESEA and IDEA: Assessments

| Assessments | ESEA | IDEA |
|-----------------------|--|--|
| In General | The ESEA requires states to administer annual academic assessments in mathematics and reading for grades 3 through 8 and once in high school. States are also required to develop assessments of science achievement to be administered once in each of three grade bands (i.e., grades 3 through 5, 6 through 8, and 9 through 12). Students with disabilities are required to participate in these assessments. The purpose of assessment under ESEA is to evaluate student achievement. | The IDEA also requires students with disabilities to participate in the state assessments required under ESEA. Under IDEA, students with disabilities also take assessments for a variety of other purposes, such as determining the type and severity of their disabilities and monitoring their progress toward achieving Individualized Education Program (IEP) goals. |
| Alternate Assessments | The ESEA requires states to develop or adopt at least one alternate assessment for students with disabilities. | IDEA references alternate assessment as it pertains to assessments administered under the ESEA. Under IDEA, all children with disabilities are required to be included in ESEA assessment systems, with appropriate accommodations and alternate assessments where necessary. The type of assessment administered under ESEA to a student with a disability is indicated in their IEP. IDEA does not have additional requirements for alternate assessments. |
| Accommodations | Under ESEA, the state assessment must provide for “reasonable” accommodations for students who have been identified with a disability under the IDEA. (An accommodation is a change in the testing material or administration procedures that enable students with disabilities to participate in the assessment.) | Under IDEA, a state provides assurances to the Secretary of Education that the state has developed guidelines for the provision of appropriate accommodations. The IEP team is responsible for selecting appropriate accommodations. IDEA regulations specify that IEP teams must select only accommodations that do not invalidate the scores on state assessments administered under the ESEA. |

Source: Table prepared by CRS based on provisions in the Elementary and Secondary Education Act (P.L. 107-110), the Individuals with Disabilities Education Act (P.L. 108-446), and associated regulations.

Note: Under ESEA regulations, only 1% of scores from state assessments based on alternate achievement standards may count as proficient in a state’s accountability system. Similarly, under ESEA regulations, only 2% of scores from state assessments based on modified achievement standards may count as proficient in a state’s accountability system.

Alignment Issues

Both the ESEA and the IDEA require all students with disabilities to participate in state assessments for accountability and both require the state to develop at least one alternate assessment. The ESEA regulations provide two options for alternate assessments (i.e., AA-AAS, and AA-MAS); however, the IDEA statutory language references only one type of alternate assessment (AA-AAS). The omission of AA-MAS from IDEA statutory language is likely due to the timing of ESEA regulations. The ESEA regulations outlining the use of AA-AAS were released in 2003, which was before the 2004 reauthorization of the IDEA. The ESEA regulations outlining the use of AA-MAS, however, were released in 2007, which was after the 2004 reauthorization of the IDEA.

Currently, regulations issued by ED outline the requirements of alternate assessments for students with disabilities. It is unclear whether the requirements regarding AA-AAS and AA-MAS would be incorporated into the ESEA statute during the next reauthorization or whether these requirements would remain in regulations. ED has indicated that the current Administration is interested in maintaining the use of AA-AAS for students with the most significant cognitive disabilities; however, it does not support the continuation of AA-MAS for other students with disabilities.⁵³ ED has expressed that AA-MAS may not be necessary if states are encouraged to develop assessments consistent with the principles of universal design.⁵⁴ ED has not made changes to the original regulations outlining the use of alternate assessments; however, this issue may receive attention from Congress during the reauthorization of the ESEA.

As discussed earlier, the IDEA requires certain assessments for students with disabilities that are not required by the ESEA. Although these assessments required by the IDEA are not “aligned” with the ESEA, they do not necessarily conflict with the ESEA. In general, students with disabilities participate in assessments under the ESEA for the purpose of accountability, which is an *evaluative* purpose of assessment. Students with disabilities participate in assessments required by the IDEA for other purposes, such as *identification* (i.e., assessments to determine eligibility for special education and related services) and *instructional* purposes (i.e., assessments that measure progress toward achieving IEP goals). Because the assessments required by the ESEA and IDEA serve different purposes, they are not necessarily duplicative or incompatible.⁵⁵

In terms of accommodations for students with disabilities on state assessments, there are some areas of alignment between the ESEA and IDEA and other areas of potential misalignment that Congress may want to clarify. For example, while both the ESEA and IDEA require the use of

⁵³ Secretary Duncan stated that “... we are moving away from the 2% rule” at a gala hosted by the American Association of People with Disabilities on March 15, 2011. The “2% rule” refers to AA-MAS because only 2% of the proficient scores from AA-MAS may be counted as proficient in the NCLB accountability system. To read Secretary Duncan’s full remarks, see <http://www.ed.gov/news/speeches/all-means-all-secretary-duncans-remarks-american-association-people-disabilities>.

⁵⁴ Statements made about AA-AAS and AA-MAS are based on information provided by the U.S. Department of Education at a meeting with staff from the House of Representatives on March 25, 2010. Universal design is a concept central to disability policy and is currently a focus of assessment design within IDEA. The universal design of assessments is based on a set of principles that promote fairness and equity in educational assessment. For more information on universal design, see page 30 of CRS Report R40514, *Assessment in Elementary and Secondary Education: A Primer*, by Erin D. Lomax.

⁵⁵ For a discussion of a general assessment framework, including the purposes of assessment, see pp. 2-3 of CRS Report R40514, *Assessment in Elementary and Secondary Education: A Primer*, by Erin D. Lomax.

“appropriate” accommodations for students with disabilities on state assessments, the IDEA regulations further specify that an IEP team may select only accommodations that do not invalidate the state assessment score. The IDEA regulations, therefore, place additional restrictions on the use of accommodations that are not present in ESEA statute or regulations, which could be interpreted as an area of misalignment.

The use of accommodations on state assessments is an issue of implementation that can generate conflict between the needs of a student with a disability and the need to collect comparable achievement data for accountability. One difficult issue to resolve is defining what an “appropriate” accommodation is. According to ESEA regulations, the requirement that an accommodation be “appropriate” refers to the concept of “appropriate for the state assessment,” not “appropriate for the student.” Although selected accommodations must be both “appropriate for the assessment” *and* “appropriate for the student,” if a particular accommodation is “appropriate for the student” but not “appropriate for the assessment,” it is generally not allowed because the resulting score would be considered invalid for the purpose of accountability under the ESEA.

This concept of “appropriate for the assessment” presents a complicating factor in selecting accommodations for students with disabilities. It may be the case that a student with a disability is provided a certain accommodation during classroom instruction and classroom assessment because it is “appropriate for the student.” When selecting accommodations for the state assessment, however, that particular accommodation may not be “appropriate for the state assessment.” The student, therefore, must participate in the state assessment without an accommodation that is typically used during classroom instruction and classroom assessment.⁵⁶ While the score obtained without the accommodation is a more valid representation of student achievement under standardized conditions, some may argue that it is not an accurate measure of achievement for a student with a disability who is typically provided that accommodation in the classroom.

If an accommodation is used that is not “appropriate for the assessment,” it is considered a non-standard accommodation. Scores from students who take the state assessment with a non-standard accommodation are considered invalid, and these students are counted as “nonparticipants” in the federal accountability system under ESEA.⁵⁷ States and LEAs have faced difficulties in defining and using only standard accommodations, causing students with disabilities to be counted as nonparticipants.⁵⁸ As a result, schools and LEAs have failed to meet participation requirements in the federal accountability system, which has led to consequences for the school.⁵⁹

⁵⁶ Media reports have found that states and LEAs have faced difficulties with certain accommodations that are typically allowed in the classroom but not on state assessments. Accommodations that seem most likely to be disallowed are the read-aloud accommodation, calculators, and scribes. For examples, see Alexa Aguilar, “Many schools fail only in special ed; Some question how students are tested,” *Chicago Tribune*, November 2, 2007; Jeff Cummings, “State board asked to OK calculators for AIMS test,” *Arizona Daily Star*, December 6, 2006; Bill Turque, “D.C. schools cutting back on ‘read-aloud,’” *D.C. Wire*, March 16, 2009.

⁵⁷ The federal accountability system requires at least 95% participation on the state assessment. The 95% participation requirement also applies to subgroups, such as students with disabilities. If a substantial number of students with disabilities use non-standard accommodations and are therefore counted as “nonparticipants,” the school or LEA may fail to meet the participation requirement of 95% and not meet AYP goals. See U.S. Department of Education, *Modified Academic Achievement Standards Non-regulatory Guidance*, April 2007, p. 32.

⁵⁸ For examples, see Margaret Reist, “‘Adequate yearly progress’ not achieved at Culler, Everett,” *Lincoln Journal Star*, November 20, 2007; Bruce Pascoe, “No Child Left Behind rules must be changed,” *Arizona Daily Star*, September 10, 2007; Charles Kelly, “Peoria schools gain on U.S. goals; but some still get dinged because of a conflict (continued...)”

As Congress considers ESEA provisions regarding assessments, it may also consider how ESEA regulations regarding alternate assessments and general issues regarding accommodations are aligned with the IDEA:

- **Common vs. differentiated assessments.** Requirements regarding the development and use of alternate assessments for students with disabilities are primarily outlined in the ESEA regulations and IDEA statute. In order to remain aligned with the IDEA, the reauthorization of the ESEA must continue to include language that requires states to maintain at least one alternate assessment (e.g., AA-AAS, AA-MAS, or some other alternate assessment not currently in use). To maintain alternate assessments for some students with disabilities, Congress could include explicit statutory language within the ESEA regarding the development and use of alternate assessments. If Congress codifies the use of alternate assessments, questions regarding what type of alternate assessment to promote may arise. Congress could choose to continue the use of AA-AAS, AA-MAS, or both. As discussed, the Secretary has expressed an interest in maintaining the AA-AAS but discontinuing the AA-MAS. If Congress agrees with the Secretary's approach, fewer students with disabilities would be eligible to participate in alternate assessments, which may have implications for how the scores of students with disabilities are included in the accountability system. That is, more students with disabilities would be expected to participate in the general state assessment and be assessed against grade-level state content and achievement standards. Under the current system, if fewer students with disabilities participated in alternate assessments, it could lead to more schools and LEAs facing consequences for failing to meet annual achievement targets.⁶⁰ If Congress continues the use of AA-AAS but discontinues AA-MAS, one alternative may be to increase the number of assessment scores from AA-AAS that may be counted as proficient in the accountability system, which would allow a greater number of students with disabilities to participate in AA-AAS.⁶¹
- **Appropriate accommodations.** Selecting appropriate accommodations for students with disabilities on state assessments has been a difficult task for some schools and LEAs. During the reauthorization of the ESEA, states may need further statutory guidance from Congress to define an "appropriate accommodation" so that they can create appropriate guidelines regarding the use of accommodations for schools and LEAs. Statutory language could include an explanation of when, if ever, a non-standard accommodation could be used even though its use could result in an invalid test score. If Congress would like to continue the current practice of defining "appropriate accommodations" as "appropriate for the state assessment" in order to ensure the validity of

(...continued)

between two federal laws, district official says," *The Arizona Republic*, September 7, 2007; Jeff Cummings, "Special-ed AIMS help a dilemma for schools," *Arizona Daily Star*, September 11, 2006.

⁵⁹ Consequences for failing to meet the participation requirement in the federal accountability system are discussed in another section of this report, "Accountability."

⁶⁰ Under the current ESEA accountability system, meeting annual achievement targets is part of determining whether a school, LEA, or state meets AYP. AYP is discussed in a later section of this report, "Accountability."

⁶¹ Currently, ED regulations allow up to 1% of scores on AA-AAS to be counted as proficient in the ESEA accountability system. Congress could introduce statutory language to raise, lower, or eliminate the 1% cap.

assessment scores, the reauthorization of the ESEA could include the IDEA regulatory language that currently specifies this requirement.⁶² It is possible, however, that by requiring only those accommodations that do not invalidate the state assessment score, Congress would be continuing to require some students with disabilities to participate in an assessment without accommodations that are typically afforded to them in classroom instruction and assessment. As such, although the score from the state assessment would be an accurate representation of what a student with a disability can do under standardized conditions, it may not be an accurate reflection of his or her ability under typical classroom conditions. Under the current system, the use of only standard accommodations (i.e., those that do not invalidate the test score) has resulted in schools, districts, and states failing to meet annual achievement targets.⁶³

- **Common assessments and accommodations across states.** The American Recovery and Reinvestment Act (ARRA; P.L. 111-5) appropriated funds for the Secretary to administer several competitive grant programs. One of the competitive grant programs is the Race to the Top Assessment Program (RTTT Assessment Program).⁶⁴ Through this program, ED has provided federal funds to two state consortia for the development of new common assessments in English language arts and mathematics.⁶⁵ The assessments must measure the achievement of all students, including students with disabilities.⁶⁶ During the reauthorization of the ESEA, Congress may promote the use of common assessments in the ESEA accountability system. Although most states are participating in one of the consortia to develop common assessments,⁶⁷ many of the participating states have not yet committed to adopting these assessments. Because the common assessments are being developed by the states with support from ED, it is not

⁶² 34 C.F.R. §300.160(b).

⁶³ Under the current ESEA accountability system, meeting annual achievement targets is part of determining whether a school, LEA, or state meets AYP. AYP is discussed in a later section of this report, “Accountability.”

⁶⁴ Although the RTTT and RTTT Assessment Program are not currently included in the ESEA, these competitive grant programs have been seen by some as an outline of ED’s priorities for the reauthorization of the ESEA. Since elements of the RTTT program and RTTT Assessment program may be relevant for ESEA reauthorization, these programs are relevant to this report. For information on the RTTT Assessment Program, see <http://www2.ed.gov/programs/racetothetop-assessment/index.html>.

⁶⁵ The common assessments are intended to measure recently developed common standards in English language arts and mathematics. The common standards were developed by the states through a partnership between the National Governors Association and the Council of Chief State School Officers. For more information on common standards, see <http://www.corestandards.org/>.

⁶⁶ For the purpose of the RTTT Assessment Program, however, state consortia are not required to design assessments for students with the “most significant cognitive disabilities” (i.e., the students who are currently eligible to participate in AA-AAS). In the RTTT Assessment Program, a student with a disability is defined as “a student with a disability under the Individuals with Disabilities Education Act, as amended (IDEA), except for a student with a disability who is eligible to participate in alternate assessments based on alternate achievement standards consistent with 34 CFR §200.6(a)(2)” (U.S. Department of Education, “Overview Information; Race to the Top Fund Assessment Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2010,” *75 Federal Register* 18171-18185, April 9, 2010.). ED continues to support the development of AA-AAS for students with the most significant cognitive disabilities, however, through a separate competitive grant program (see U.S. Department of Education, “Office of Special Education and Rehabilitative Services; Overview Information; Technical Assistance on Data Collection—General Supervision Enhancement Grants: Alternate Academic Achievement Standards; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2010,” *75 Federal Register* 32435-32440, June 8, 2010.).

⁶⁷ The Partnership for Assessment of Readiness for College and Careers (PARCC) is a consortium of 26 states; the SMARTER Balanced Assessment Consortium is a consortium of 31 states. Some states participate in both consortia.

clear whether Congress will support or require the adoption of common assessments during the reauthorization of the ESEA. Moving forward, if common assessments are adopted, Congress could require the development of a list of “common accommodations” that are allowable. If a list of “common accommodations” was developed, however, there would be no guarantee that states would implement these accommodations similarly, which would result in a lack of comparable assessment results across states. Unless mandated by Congress, not all states would administer common assessments, and not all states that do administer common assessments may provide accommodations in a consistent way. As such, even with the use of a common assessment, results for students with disabilities would not likely be comparable across states. Given the complexity of determining the development and implementation of common assessments, Congress could require ED to monitor and evaluate the use of accommodations on common assessments.

Accountability⁶⁸

Over the last two decades, federal education policy has been moving toward a focus on student achievement as a means of measuring accountability for schools, LEAs, and states. The increased focus on student achievement and other educational indicators is evident in both the ESEA and IDEA. Both laws measure student achievement and other educational indicators and use these data within a state accountability system. During the latest reauthorizations of the ESEA and the IDEA, statutory provisions were added that increased the emphasis on student outcomes and accountability.

The ESEA accountability system was designed to assess whether schools and LEAs are making AYP with respect to reading and mathematics achievement, achievement on another academic indicator, and student participation in assessments. The IDEA “monitoring and enforcement” system was designed to assess whether states are meeting a series of academic and compliance indicators to determine whether the law is being implemented as intended. For the purpose of this report, the IDEA “monitoring and enforcement” system is referred to as an “accountability” system.

It is important to note that the federal government enforces accountability requirements at different levels in the ESEA and the IDEA. Under the ESEA, the federal government directly monitors the progress of states, LEAs, and schools. Consequences of not meeting accountability requirements are targeted at the LEA and school level. Under the IDEA, the federal government directly monitors the progress of states only. States, however, are required by the IDEA to monitor their own LEAs using the same system that the federal government uses to monitor the states. Under the IDEA accountability system, consequences of not meeting accountability requirements are targeted at the state level; however, states are required by the IDEA to implement the same consequences at the LEA level. IDEA does not require states or LEAs to implement consequences at the school level.

⁶⁸ This section draws on reports previously written by Rebecca Skinner. For more information on accountability in the ESEA, see CRS Report RL33960, *The Elementary and Secondary Education Act, as Amended by the No Child Left Behind Act: A Primer*, by Rebecca R. Skinner and CRS Report R41533, *Accountability Issues and Reauthorization of the Elementary and Secondary Education Act*, by Rebecca R. Skinner and Erin D. Lomax.

The following section provides background information on the relevant statutory and regulatory language that describes accountability systems in the ESEA and IDEA. This discussion is followed by an analysis of how the accountability systems differ, an examination of the alignment between the two laws, and a discussion of alignment options that Congress may consider.

Background

Title I-A of ESEA requires states to develop and implement a state accountability system to ensure that schools and LEAs make progress with respect to student achievement.⁶⁹ State accountability systems must be based on the academic standards and assessments discussed above. The accountability system must be the same system for all public schools (except that public schools and LEAs that do not receive Title I-A funds are not subject to outcome accountability requirements), and incorporate rewards and sanctions based on student performance.

A key concept embodied in the outcome accountability requirements of the ESEA is AYP. AYP is determined based on three components: (1) student academic achievement on state reading and mathematics assessments, with a focus on the percentage of students scoring at the proficient level or higher; (2) 95% student participation rates in assessments by all students and for any subgroup for which data are disaggregated; and (3) performance on another academic indicator, which for high schools must be graduation rate.⁷⁰ Each state plan submitted under Section 1111 of the ESEA defines annual AYP targets, which are set with the goal of all students becoming proficient in reading and mathematics by school year 2013-2014.

Schools or LEAs meet AYP standards only if they meet the required threshold levels of performance on all three indicators for the “all students” group and any subgroup for which data are disaggregated. The subgroups are specified in statute as economically disadvantaged students, students with limited English proficiency (LEP), students with disabilities, and students in major racial and ethnic subgroups.

The primary purpose of AYP requirements is to serve as the basis for identifying schools and LEAs where performance is inadequate, so that these inadequacies may be addressed through a series of consequences. Consequences applied to schools and LEAs range from providing increased support and opportunities for public school choice and supplemental educational services to corrective action and restructuring.⁷¹ If any subgroup of students or the “all students” group does not meet AYP targets for two consecutive years or more (at the school or LEA level), the school or LEA, respectively, is subject to the statutory consequences, regardless of the number or type of subgroups that did not meet the AYP targets. If the “students with disabilities” subgroup does not meet AYP targets, the consequences apply to the entire school or LEA and consequences are not specifically targeted to the “students with disabilities” subgroup.

⁶⁹ ESEA, §1111(b)(2).

⁷⁰ States select the other academic indicator for elementary and middle schools. Generally, states choose to use attendance rates.

⁷¹ For specific information on consequences and rewards based on AYP, see “Performance-Based Accountability: Consequences and Rewards” in CRS Report R41533, *Accountability Issues and Reauthorization of the Elementary and Secondary Education Act*, by Rebecca R. Skinner and Erin D. Lomax.

IDEA requires the Secretary to monitor each state's implementation of the law based on three priorities: (1) provision of FAPE;⁷² (2) general supervisory authority (e.g., child find, effective monitoring, mediation, etc.); and (3) disproportionate representation of racial and ethnic groups in special education and related services, to the extent the representation is the result of inappropriate identification. The Secretary requires the states to monitor each of their LEAs using the same three priorities.⁷³

Under IDEA, states are required to establish measureable targets for twenty indicators developed by the Secretary.⁷⁴ **Appendix B** provides a table of the IDEA, Part B Indicators. The indicators established by the Secretary are a combination of compliance and performance indicators. For example, compliance indicators measure a state's adherence to appropriate processes, such as the timeliness of an initial evaluation for special education and related services (Indicator 11) or timeliness of due process hearings (Indicator 17). Performance indicators measure student outcomes, such as high school graduation rates (Indicator 1), drop-out rates (Indicator 2), and participation and performance of students with disabilities on state assessments (Indicator 3).

Each state must collect data on the indicators and report annually to the Secretary.⁷⁵ Based on the state's performance on these indicators, information obtained through monitoring visits, and any other public information made available, the Secretary makes a determination of the state's implementation of IDEA. The Secretary determines if the state meets requirements, needs assistance, needs intervention, or needs substantial intervention in implementing the requirements of Part B of IDEA.⁷⁶ If states are not determined to "meet requirements" for two consecutive years, the Secretary enforces consequences ranging from advising the state to seek technical assistance to withholding funds or referring the case to the Department of Justice.⁷⁷

Table 3 provides a comparison of select statutory and regulatory provisions of the ESEA and IDEA discussed above:

⁷² See footnote 27.

⁷³ IDEA, §616(a)(3).

⁷⁴ 34 C.F.R. §300.601(a)(3).

⁷⁵ 34 C.F.R. §300.601(b)(1).

⁷⁶ States are required to make determinations of their LEAs using the same system as the Secretary uses to make determinations of states (see 34 C.F.R. §300.600).

⁷⁷ The Secretary has many statutory enforcement options available depending on the severity of a state's difficulty in implementing the requirements of IDEA. See IDEA, §616(e).

Table 3. Comparison of Select Statutory and Regulatory Provisions of the ESEA and IDEA: Accountability

| Accountability | ESEA | IDEA |
|-------------------------------------|---|--|
| In General | The ESEA accountability system measures whether schools and local educational agencies (LEAs) are making adequate yearly progress (AYP) in reading and mathematics achievement. | The IDEA “monitoring and enforcement” system assesses whether states are meeting a series of academic and compliance indicators to determine whether the law is being implemented as intended. |
| Components of Accountability System | <p>AYP is determined based on three components: (1) student academic achievement on state reading and mathematics assessments, with a focus on the percentage of students scoring at the proficient level or higher; (2) 95% student participation rates in assessments by all students and for subgroups (i.e., economically disadvantaged students, LEP students, students with disabilities, and students in major racial and ethnic subgroups); and (3) performance on another academic indicator, which for high schools must be graduation rate.</p> <p>Beginning in school year 2011-2012, schools, LEAs, and states must report the “four-year adjusted cohort graduation rate.” States may also propose to use an “extended-year adjusted cohort graduation rate”; however, ED does not require states to do so.</p> | <p>Under IDEA, the Secretary is required to monitor each state’s implementation of the law based on three priorities: (1) provision of a Free Appropriate Public Education (FAPE); (2) general supervisory authority (e.g., child find, effective monitoring, mediation, etc.); and (3) disproportionate representation of racial and ethnic groups in special education and related services, to the extent the representation is the result of inappropriate identification. The Secretary requires the states to monitor each of their LEAs using the same three priorities.</p> <p>Under IDEA, states must report the high school graduation rate for students with disabilities. States must use the same graduation rate calculation as reported to ED under the ESEA.</p> |
| Targets | Each state plan submitted under ESEA defines annual AYP targets, which are set with the goal of all students becoming proficient in reading and mathematics by school year 2013-2014. | Under IDEA, states are required to establish measureable targets for twenty indicators developed by the Secretary. The indicators are a combination of compliance indicators (e.g., the timeliness of an initial evaluation for special education and related services), and performance indicators (e.g., high school graduation rates). |
| Results | The results of annual academic state assessments are used within the ESEA accountability system to determine whether schools and LEAs have made AYP. | Based on the state’s performance on the twenty indicators, information obtained through monitoring visits, and other public information, the Secretary makes a determination of the state’s implementation of IDEA. The Secretary determines if the state meets requirements, needs assistance, needs intervention, or needs substantial intervention in implementing the requirements of IDEA. |
| Consequences | If schools and LEAs fail to meet AYP for two consecutive years or more, the Secretary enforces consequences that range from providing increased support and opportunities for public school choice and supplemental educational services to corrective action and restructuring. | If states are not determined to “meet requirements” for two consecutive years, the Secretary enforces consequences ranging from advising the state to seek technical assistance to withholding funds or referring the case to the Department of Justice. |

Source: Table prepared by CRS based on provisions in the Elementary and Secondary Education Act (P.L. 107-110), the Individuals with Disabilities Education Act (P.L. 108-446), and associated regulations.

Alignment Issues

The ESEA and the IDEA have separate accountability systems with similar, yet distinct, goals. The primary purpose of the ESEA accountability system is to ensure that all students are proficient in reading and mathematics by 2013-2014. The primary purpose of the IDEA accountability system is to ensure that each child with a disability is provided FAPE, which includes appropriate special education and related services, as well as, procedural safeguards for students and parents.⁷⁸

There is some overlap, however, between the ESEA and IDEA accountability systems. Both systems report achievement levels or performance outcomes for students with disabilities. For example, the first three IDEA indicators are also included in the ESEA accountability system. Indicator 1 and Indicator 2 require states to report high school graduation rates for students with disabilities and drop out rates for students with disabilities.⁷⁹ For IDEA reporting purposes, ED requires states to use the graduation rate calculation, dropout data, and timeline established in the ESEA. Indicator 3 requires states to report on the participation and performance of students with disabilities on state assessments, including (1) the percent of LEAs with a disability subgroup that meets the state's minimum "n" size that meets the state's AYP targets for the disability subgroup; (2) the participation rate for children with disabilities; and (3) the proficiency rate for children with disabilities against grade-level, modified, and alternate achievement standards. These data are also required for accountability reporting under Title I-A of the ESEA.

Other than IDEA Indicators 1 through 3, the ESEA and IDEA accountability systems do not overlap with respect to student achievement data. The remaining indicators measure the implementation of the IDEA and are not relevant to the implementation of the ESEA. That said, the remaining indicators do not appear to be in conflict with the goals and purposes of the ESEA accountability system.

Two possible areas of misalignment in the accountability systems, however, lie outside of the specific AYP targets and indicators. The first possible area of misalignment concerns IEP goals. As discussed in the "Standards" section above, IEP goals required by the IDEA are not always aligned with state academic content and achievement standards required by the ESEA. Since the ESEA accountability system is based on state academic content and achievement standards and state assessments, misaligned IEP goals can set up a dual system of academic expectations for students with disabilities. If students have IEP goals that are below grade level, it can be difficult for teachers to determine the appropriate instruction to provide to the student. Under the ESEA, teachers would be held accountable for teaching the student grade-level academic content and achievement standards; under the IDEA, teachers and related service providers would be expected to teach the student according to his or her IEP goals.

The second possible area of misalignment concerns the high school graduation rate calculation. ESEA regulations require states to report the four-year adjusted cohort graduation rate. The four-year adjusted cohort graduation rate is the number of students who graduate in four years with a regular high school diploma divided by the number of students who form the adjusted cohort for

⁷⁸ For more information on the procedural safeguards of IDEA, see CRS Report R41833, *The Individuals with Disabilities Education Act (IDEA), Part B: Key Statutory and Regulatory Provisions*, by Ann Lordeman.

⁷⁹ Refer to **Table B-1** for the list of indicators.

the graduating class.⁸⁰ This graduation rate calculation may not fully account for the educational experiences of students with disabilities in several ways. First, under IDEA, students with disabilities are entitled to receive FAPE from ages 3 through 21 (inclusive).⁸¹ IDEA, therefore, affords students with disabilities more than four years to complete their high school education. In some cases, a student with a disability may take five or six years to fulfill the requirements of a regular high school diploma. Second, some students with disabilities do not work toward a regular high school diploma. Students with disabilities who work toward an alternative diploma, certificate of completion, certificate of attendance, or some other acknowledgment may not be fully represented in the ESEA accountability system.

As Congress considers ESEA provisions regarding accountability systems, it may also consider how IDEA and ESEA accountability systems are aligned:

- **Inclusion of IEP goals in ESEA accountability system.** Several organizations have proposed increasing the role of IEPs in ESEA accountability systems. For example, several organizations proposed allowing states to count students with disabilities as meeting AYP if they successfully completed their IEP goals.⁸² In this scenario, states and LEAs would be provided with the flexibility necessary to develop truly individualized education plans for students with disabilities and allow the curriculum, standards, and assessments to be adapted to suit the needs of the student. On the other hand, the focus on meeting IEP goals for AYP may inadvertently lead to setting lower goals for students with disabilities, thereby lowering overall expectations of achievement for students with disabilities. Such an outcome would be inconsistent with the original intent of including students with disabilities in state accountability systems—increasing access to the general education curriculum, and, in turn, increasing expectations and achievement of students with disabilities.⁸³ ED has commented that IEP goals are not currently appropriate to use for AYP because,

IEP goals may address a broad range of individualized instructional needs, as well as behavioral and developmental needs, and might not be based on the state’s academic content standards. IEP goals may cover a range of issues beyond reading/language arts and mathematics, such as behavior, social skills, or the use of adaptive equipment, and, as such, an examination of how well a student met his or her IEP goals is not synonymous with achievement measured by an alternate assessment for AYP purposes.⁸⁴

⁸⁰ The cohort is adjusted to include students who transfer into the cohort during the 9th grade and the next three years and exclude students who transfer out, emigrate to another country, or die during the same period.

⁸¹ IDEA, §612(a)(1). FAPE is required for students from age 3 through 21 (inclusive) unless this is inconsistent with state law or practice, or the order of any court; or unless state law does not require the provision of special education and related services to students from age 18 through 21 who, in their educational placement prior to incarceration in an adult correctional facility, were not identified as a “child with a disability” under §602 or did not have an IEP.

⁸² National Governors Association, Council of Chief State School Officers, and National Association of State Boards of Education, *Joint Statement on the Reauthorization of the No Child Left Behind Act (NCLB)*, <http://www.nga.org/files/live/sites/NGA/files/pdf/0704NCLBSTATEMENT.PDF>.

⁸³ For more discussion on the consequences of using IEPs in accountability systems, see “Role of IEPs” in CRS Report R40701, *Alternate Assessments for Students with Disabilities*, by Erin D. Lomax.

⁸⁴ U.S. Department of Education, *Alternate Achievement Standards for Students with the Most Significant Cognitive Disabilities*, August 2005, p. 17, <http://www2.ed.gov/policy/elsec/guid/altguidance.pdf>.

If Congress chooses to increase the role of IEPs in the ESEA accountability system, statutory language outlining the components of the ESEA system would need to be altered to incorporate the use of IEPs and possibly allow for individualized goals for students with disabilities.⁸⁵

- **Graduation rates and accountability.** ESEA regulations specify that schools and LEAs will be held accountable for the four-year adjusted cohort graduation rate beginning with data collected in school year 2011-2012. As discussed above, the “four year” rate may not fully account for the educational experiences of some students with disabilities because IDEA allows them to receive FAPE in high school through age 21. ESEA regulations further specify that states may apply to ED to use an “extended-year adjusted cohort graduation rate” as part of its accountability system.⁸⁶ The extended-year adjusted cohort rate allows a state to give schools and LEAs credit for students who graduate in more than four years with a regular high school diploma. The state may not, however, propose to use the extended-year graduation rate for specific student subgroups (e.g., students with disabilities). In addition, the extended-year adjusted cohort rate would not apply to students with disabilities who do not receive a regular diploma.⁸⁷ To become conceptually aligned with the timeline of high school completion under IDEA, Congress could consider allowing or requiring the use of the extended-year graduation rate requirement in statutory language. If extended-year adjusted cohort rates are used by states, more students with disabilities may be included in the high school graduation rate calculation. As such, schools may be accountable for ensuring the graduation of a broader pool of students. If extended-year adjusted cohort rates are not used by states, however, there may be less incentive in the ESEA accountability system for states to assist students with disabilities in graduating from high school if they need more than four years to complete the requirements for a regular high school diploma.
- **Alternative measures of high school completion.** Some students with disabilities work toward other forms of high school completion, which is a decision that is typically made by the student’s IEP team. This decision has a direct effect on the high school graduation rate that must be reported for both the ESEA and IDEA accountability systems. Decisions made by an IEP team under IDEA, therefore, may influence whether or not schools and LEAs meet the high school graduation rate targets outlined in their ESEA accountability systems. Some may argue that Congress could consider adding statutory language that would allow other forms of high school completion to be reported along with the ESEA high school graduation rate so that IEP teams do not exercise undue

⁸⁵ If IEP goals are used in the ESEA accountability system, however, it may be necessary for Congress to include requirements in the IEP process under IDEA that would prevent setting lower goals for students with disabilities. For example, Congress could require an external validation of IEP goals. This external review could be a peer-review process conducted by ED, the state, or the LEA.

⁸⁶ 34 C.F.R. §200.19(b)(1)(v).

⁸⁷ According to ED, “A student with a disability who does not graduate with a regular high school diploma, but instead receives an alternative diploma, certificate of completion, or any other degree or certificate that is not fully aligned with a state’s academic content standards may not be counted as graduating in calculating either the four-year or extended-year graduation rate.” See U.S. Department of Education, *High School Graduation Rate Non-Regulatory Guidance*, Washington, DC, December 22, 2008, p. 7, <http://www2.ed.gov/policy/elsec/guid/hsrguidance.pdf>.

influence over the ESEA accountability system. If information on students with disabilities who receive some other form of high school completion is reported along with graduation rates for the purpose of accountability, more students with disabilities would be included in the ESEA accountability system; however, this practice may provide an incentive for states and IEP teams to set lower graduation goals for students with disabilities.⁸⁸

Teachers⁸⁹

A major focus of both the ESEA and the IDEA is to improve academic outcomes for all students, including students with disabilities. It is widely recognized that improving academic outcomes for all students is dependent on the quality of instruction they receive from teachers. As discussed earlier, approximately 60% of students with disabilities spend at least 80% of their instructional time in the general education classroom. Because they receive instruction inside and outside the general education classroom, students with disabilities are taught by both general education teachers and special education teachers. The quality of both general education teachers and special education teachers may influence the achievement of students with disabilities. Furthermore, collaborative efforts between general education teachers and special education teachers may contribute to the achievement of students with disabilities.

The following section provides background information on the relevant statutory and regulatory language that describes teacher requirements in the ESEA and IDEA. This discussion is followed by an examination of the alignment between the ESEA and IDEA and a discussion of alignment options that Congress may consider.

Background

The ESEA includes a definition of “highly qualified” teacher as the term relates to teachers of elementary and secondary education.⁹⁰ In general, the ESEA requires that teachers of core academic subjects:⁹¹ (1) must have full state certification, (2) must not have had any certification waived on an emergency, temporary, or provisional basis, and (3) must have at least a baccalaureate degree.⁹² In addition, the definition has various requirements depending on the

⁸⁸ If other forms of high school completion are counted, it may be necessary for Congress to include requirements in the IEP process under IDEA that would prevent setting lower high school completion or graduation goals for students with disabilities. Congress could require an external validation of the IEP goals regarding high school completion for students with disabilities. This external review could be a peer-review process conducted by ED, the state, or the LEA.

⁸⁹ This section draws on reports previously written by Jeffrey Kuenzi. For more information on teacher policy, see CRS Report RL33333, *A Highly Qualified Teacher in Every Classroom: Implementation of the No Child Left Behind Act and Reauthorization Issues for the 112th Congress*, by Jeffrey J. Kuenzi and CRS Report R41267, *Elementary and Secondary School Teachers: Policy Context, Federal Programs, and ESEA Reauthorization Issues*, by Jeffrey J. Kuenzi.

⁹⁰ ESEA, §9101(23).

⁹¹ Core academic subjects are defined as “English, reading, or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography” (see ESEA, §9101(11)).

⁹² ESEA, §9101(23)(A). The requirement that all teachers have a baccalaureate degree is not mentioned in subsection (A); however, this requirement is mentioned in several places within the definition, which results in all teachers being required to have a baccalaureate degree.

teacher's level of experience (i.e., new versus experienced) and the grade level taught by the teacher (i.e., elementary, middle, or secondary).

With respect to new teachers, a new *elementary* school teacher must demonstrate subject knowledge and teaching skills in reading, writing, mathematics, and other areas of the basic elementary school curriculum by passing a state test. A new *middle or secondary* school teacher must demonstrate a high level of competency in each of the academic subjects taught in one of the following ways: (1) passing a state academic subject test, or (2) completing an academic major, graduate degree, or coursework equivalent to an undergraduate academic major, or advanced certification credentialing in each of the academic subjects taught.⁹³ Experienced elementary, middle, or secondary school teachers may meet either the definition of "highly qualified" for new teachers or demonstrate competency in all subjects taught using a "high objective uniform state standard of evaluation" (HOUSSE).⁹⁴

The IDEA also includes a definition of "highly qualified" teacher as the term relates to special education teachers of elementary and secondary education.⁹⁵ Under IDEA, for any special education teacher, the term "highly qualified" has the meaning given to the term in the ESEA with several exceptions. First, the IDEA definition of "highly qualified" applies to all special education teachers regardless of whether they teach core academic subjects.⁹⁶ All special education teachers (1) must have full state certification, (2) must not have had any certification waived on an emergency, temporary, or provisional basis, and (3) must have at least a baccalaureate degree.⁹⁷ Second, the IDEA definition broadens the "highly qualified" requirements with respect to two groups of special education teachers: (1) teachers who teach only core academic subjects exclusively to students with the most significant cognitive disabilities and (2) teachers who teach more than one core academic subject exclusively to students with disabilities.⁹⁸

Teachers who teach core academic subjects exclusively to students with the most significant cognitive disabilities, whether new or not new to the profession, have several options for meeting the "highly qualified" definition: (1) teachers may meet the "highly qualified" definition of the ESEA for any elementary, middle, or secondary teacher; (2) *elementary* teachers may meet the requirements by demonstrating competence on HOUSSE; and (3) *middle and secondary* school teachers may meet the requirements by demonstrating "subject matter knowledge appropriate to the level of instruction being provided, as determined by the State, needed to effectively teach to those standards" (i.e., alternate achievement standards).⁹⁹

⁹³ ESEA, §9101(23)(B).

⁹⁴ ESEA, §9101(23)(C). The HOUSSE standard (1) is set by the state for both grade appropriate academic subject matter knowledge and teaching skills; (2) is aligned with challenging state academic content and achievement standards; (3) provides objective, coherent information about the teacher's attainment of core content knowledge in the subjects taught; (4) is applied uniformly to all teachers in the academic subject taught and the same grade level throughout the state; (5) takes into consideration, but not based primarily on, the time the teacher has been teaching the academic subject; (6) is made available to the public upon request; and (7) may involve multiple, objective measures of teacher competency.

⁹⁵ IDEA, §602(10).

⁹⁶ Recall that "highly qualified" requirements in the ESEA apply exclusively to teachers of core academic subjects.

⁹⁷ IDEA, §602(10)(B).

⁹⁸ The IDEA definition of "highly qualified" does not amend the ESEA definition of "highly qualified."

⁹⁹ IDEA, §602(10)(C)(ii).

Teachers who teach more than one core academic subject exclusively to students with disabilities also have several options for meeting the “highly qualified” definition: (1) teachers may meet the ESEA requirements for each core subject taught; (2) experienced special education teachers may meet the requirements based on the ESEA HOUSSE option, which may include a single evaluation covering multiple subjects; and (3) new special education teachers who are already “highly qualified” in mathematics, language arts, or science have two years from the date of employment to meet the “highly qualified” definition with respect to the other core subjects taught.¹⁰⁰

Table 4 provides a comparison of select statutory and regulatory provisions of the ESEA and IDEA discussed above:

Table 4. Comparison of Select Statutory and Regulatory Provisions of the ESEA and IDEA: Teachers

| Teachers | ESEA | IDEA |
|---------------------------------------|--|--|
| In General | The ESEA includes a definition of “highly qualified” teacher as the term relates to teachers of elementary and secondary education. | The IDEA also includes a definition of “highly qualified” teacher as the term relates to <i>special education</i> teachers of elementary and secondary education. |
| Highly Qualified Teacher Requirements | The ESEA “highly qualified” teacher definition requires that teachers of core academic subjects (i.e., English, reading, or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography): (1) must have full state certification, (2) must not have had any certification waived on an emergency, temporary, or provisional basis, and (3) must have at least a baccalaureate degree. In addition, the definition has various requirements depending on the teacher’s level of experience (i.e., new versus experienced) and the grade level taught by the teacher (i.e., elementary, middle, and secondary). | Under IDEA, for any special education teacher, the term “highly qualified” teacher has the meaning given to the term in the ESEA with some exceptions. First, the IDEA definition of “highly qualified” teacher applies to all special education teachers regardless of whether they teach core academic subjects. Second, the IDEA definition broadens the “highly qualified” teacher requirements with respect to special education teachers who teach only core academic subjects exclusively to students with the most significant cognitive disabilities and to teachers who teach more than one core academic subject exclusively to students with disabilities. |

Source: Table prepared by CRS based on provisions in the Elementary and Secondary Education Act (P.L. 107-110), the Individuals with Disabilities Education Act (P.L. 108-446), and associated regulations.

¹⁰⁰ IDEA, §602(10)(D).

Alignment Issues

The ESEA provides the definition of “highly qualified” teacher for elementary and secondary school teachers. The IDEA definition of “highly qualified” teacher broadens requirements for special education teachers. The legislative language in the ESEA and the IDEA are aligned conceptually, and the IDEA definition references the ESEA definition. Furthermore, the IDEA states that a teacher who is deemed “highly qualified” under IDEA shall be considered “highly qualified” for the purposes of the ESEA.¹⁰¹

One potential area of misalignment related to the “highly qualified” teacher definitions concerns the implementation of the requirements at the school level. ESEA outlines the requirements for general education teachers and IDEA outlines the requirements for special education teachers, which sets up two “tracks” to become “highly qualified.” The existence of two tracks seems to imply that students without disabilities are taught by general education teachers and students with disabilities are taught by special education teachers. In reality, general education teachers and special education teachers share the responsibility for educating most students with disabilities. As previously discussed, almost 60% of students with disabilities spend at least 80% of their time in the general education classroom. Many students with disabilities, therefore, spend the *majority* of their time taught by a general education teacher. Even if a general education teacher is “highly qualified,” the teacher may not have any preparation or training in special education.

There is no federal requirement for general education teachers to have specialized preparation or training in special education. The likelihood that a general education teacher has received such preparation or training depends on certification requirements in the state. According to data from the National Association of State Directors of Teacher Education and Certification (NASDTEC), in order for a general education teacher to become certified, 28 states require coursework in special education, 11 states do not require coursework in special education, and 12 states did not report this information.¹⁰² In the 28 states that require coursework in special education, information on the amount and type of coursework is not readily available.

A second potential area of misalignment in teacher policy more broadly concerns the current shift toward “teacher effectiveness.”¹⁰³ During the implementation of the “highly qualified” teacher definition, this requirement came to be seen as setting minimum qualifications for entry into the profession and was criticized by some for establishing standards so low that nearly every teacher met the requirement.¹⁰⁴ Meanwhile, policymakers have grown increasingly interested in the output of teachers’ work; that is, their performance in the classroom and the effectiveness of their instruction. A number of federal, state, and local programs have been implemented in an effort to improve teacher performance through alternative compensation systems.¹⁰⁵ The most recent

¹⁰¹ IDEA, §602(10)(F). ESEA regulations also specify that a special education teacher shall be deemed “highly qualified” under the ESEA if the teacher meets the requirements of the IDEA (see 34 C.F.R. §200.56(d)).

¹⁰² NASDTEC Knowledge Database, Table B1, retrieved by CRS on July 21, 2011.

¹⁰³ For more information on teacher effectiveness, see CRS Report R41051, *Value-Added Modeling for Teacher Effectiveness*, by Erin D. Lomax and Jeffrey J. Kuenzi.

¹⁰⁴ According to a study conducted for the Education Department by the RAND Corporation, “By 2006–07, the vast majority [over 90 percent] of teachers met their states’ requirements to be considered highly qualified under NCLB.” <http://www.ed.gov/rschstat/eval/teaching/nclb-final/report.pdf>.

¹⁰⁵ For more information on these programs, see CRS Report R40576, *Compensation Reform and the Federal Teacher Incentive Fund*, by Jeffrey J. Kuenzi.

federal effort to promote teacher evaluation systems based on teacher effectiveness is the Race to the Top (RTTT) grant program.¹⁰⁶ A significant feature of teacher evaluation systems that measure the output of teachers' work is the concept of "teacher effectiveness." Under the RTTT program, the measurement of teacher effectiveness was required to be based, in part, on student achievement on state assessments.¹⁰⁷

One concern with the potential policy shift toward teacher evaluation systems based on teacher effectiveness is that it is unclear how special education teachers would be included in these systems.¹⁰⁸ Teacher evaluation systems based on teacher effectiveness must be able to link student achievement data to the teacher who is responsible for instruction. Students with disabilities are educated in multiple settings by multiple teachers. As such, general education teachers and special education teachers share the responsibility of educating students with disabilities. It is unclear whether the general education teacher or the special education teacher would ultimately be held accountable for the student's achievement.¹⁰⁹ It is possible that both general and special education teachers could be held accountable for the student's achievement, but the logistics of "splitting" responsibility for student achievement may complicate teacher evaluation systems. There also may be some complicating factors in terms of measurement. That is, students with disabilities participate in a variety of state assessments (i.e., general state assessments and alternate assessments), and it is unclear whether all types of assessment are appropriate to use in a teacher evaluation system that is based, in part, on student achievement on state assessments.

As Congress considers the ESEA provisions regarding teacher preparation, recruitment, and evaluations, it may also consider how these provisions are aligned with IDEA:

- **Highly qualified teachers providing instruction to students with disabilities.** Several education disability advocacy groups that have promoted maintaining the "highly qualified" teacher definition have called for the reauthorization of the ESEA to include more specific requirements for general educators who teach students with disabilities.¹¹⁰ Specifically, the Learning Disabilities Association of America (LDA) recommends that "highly qualified" general education teachers should be prepared to deliver scientific, research-based instruction for students with disabilities and be able to modify the curriculum, as necessary.¹¹¹ The National Association of State Directors of Special Education (NASDSE)

¹⁰⁶ The recent federal effort to promote the use of teacher evaluation systems based on teacher effectiveness was led by the Administration. For more information on the RTTT grant program and how it relates to teacher effectiveness, see CRS Report R41051, *Value-Added Modeling for Teacher Effectiveness*, by Erin D. Lomax and Jeffrey J. Kuenzi.

¹⁰⁷ For more information on the measurement of teacher effectiveness, see CRS Report R41051, *Value-Added Modeling for Teacher Effectiveness*, by Erin D. Lomax and Jeffrey J. Kuenzi.

¹⁰⁸ For a discussion of states' work in the area of performance-based compensation with a focus on special educators, see Paula Burdette, *Performance-based Compensation: Focus on Special Education Teachers*, in Forum, April 2011, <http://www.projectforum.org/docs/Performance-basedCompensation-FocusOnSpecialEducationTeachers-final.pdf>.

¹⁰⁹ It is possible to design teacher evaluation systems in which groups of teachers are responsible for the achievement of students. Under the RTTT grant program, however, states were required to use the measurement of teacher effectiveness to make individual-level decisions about teachers (e.g., compensation, promotion, tenure, and dismissal), so it is unclear whether a group model would have been permitted. For more information on the requirements of the RTTT grant program (including teacher evaluation systems), see <http://edocket.access.gpo.gov/2009/pdf/E9-27426.pdf>.

¹¹⁰ See, for example, comments from the LDA (<http://www.lदानatl.org/pdf/LDA%20%20ESEA%20Comments%2003.22.10.pdf>) and NASDSE (http://nasdse.org/Portals/0/Documents/Gov%20Relations/ESEA_reauthorization_principles_2010.pdf).

¹¹¹ See LDA comments, available at <http://www.lदानatl.org/pdf/LDA%20%20ESEA%20Comments%2003.22.10.pdf>.

recommends that language be added to the ESEA that requires teachers to “have knowledge and proficiency to work with all types of diverse students, including students with disabilities, in order to be highly qualified.”¹¹² Because many students with disabilities spend the majority of their time in the regular education classroom, the ability of a regular education teacher to address the needs of students with disabilities may directly impact the learning of students with disabilities and their performance on state assessments. Under the current ESEA accountability system, the quality of instruction provided to students with disabilities by general education teachers, therefore, likely contributes to a school’s, LEA’s, or state’s ability to meet AYP targets for students with disabilities.

- **Collaboration between general and special education teachers.** Because many students with disabilities spend the majority of their time in a general education classroom, a common priority of education disability advocacy groups is to increase collaboration between general education teachers and special education teachers.¹¹³ For example, the Council for Exceptional Children (CEC) recommends that ESEA reauthorization support mentoring and induction programs that support collaboration between general and special education. CEC asserts that such collaboration may lead to more successful teaching or co-teaching for students with disabilities and the provision of more appropriate accommodations and modifications for students with disabilities.¹¹⁴ Similarly, the Council of Administrators of Special Education recommends that ESEA reauthorization include language promoting collaboration so that students with disabilities can receive appropriate instruction in the least restrictive environment.¹¹⁵ If general education teachers and special education teachers work more collaboratively, it may be more likely that all teachers take responsibility for the achievement of students with disabilities. In addition, a collaborative model may create a system in which the educational needs of students with disabilities are more likely to be met, which may increase the quality of instruction received by students with disabilities. As discussed above, under the current ESEA accountability system, the quality of instruction provided to students with disabilities likely contributes to a school’s, LEA’s, or state’s ability to meet AYP targets for students with disabilities.

¹¹² See NASDSE comments, available at http://nasdse.org/Portals/0/Documents/Gov%20Relations/ESEA_reauthorization_principles_2010.pdf. NASDSE maintains, however, that no federal requirement should be enforced. Rather, states should continue to have the authority to establish the specific criteria for teachers to be deemed “highly qualified” in their state.

¹¹³ See, for example, LDA and NASDSE comments, available at <http://www.lदानatl.org/pdf/LDA%20%ESEA%20Comments%2003.22.10.pdf> and http://nasdse.org/Portals/0/Documents/Gov%20Relations/ESEA_reauthorization_principles_2010.pdf; the Council for Exceptional Children (http://www.cec.sped.org/Content/NavigationMenu/PolicyAdvocacy/CECPolicyResources/NoChildLeftBehind/CEC_2010_ESEA_Policy_WEB.pdf); and the Council of Administrators of Special Education (http://www.casecec.org/Documents/CASE_ESEA_Recommendations.pdf).

¹¹⁴ See CEC comments, available at http://www.cec.sped.org/Content/NavigationMenu/PolicyAdvocacy/CECPolicyResources/NoChildLeftBehind/CEC_2010_ESEA_Policy_WEB.pdf.

¹¹⁵ See CASE comments, available at http://www.casecec.org/Documents/CASE_ESEA_Recommendations.pdf. For more information on the “least restrictive environment,” see CRS Report R41833, *The Individuals with Disabilities Education Act (IDEA), Part B: Key Statutory and Regulatory Provisions*, by Ann Lordeman.

- **Teacher effectiveness.** Some organizations, such as CEC and the National Coalition on Personnel Shortages in Special Education and Related Services, assert that special education teachers should be fully included in any teacher evaluation system that measures the effectiveness of general education teachers.¹¹⁶ There may be difficulties associated with designing one teacher evaluation for all teachers (i.e., general education teachers and special education teachers). Teacher evaluation systems that include the measurement of “teacher effectiveness” rely on the ability to link student achievement data to the teacher or teachers who are responsible for the student’s learning. As discussed previously, students with disabilities are often taught in more than one setting by more than one teacher. It may be difficult to determine which teacher should be held accountable for the achievement of students with disabilities. In addition, it may be difficult to incorporate student achievement on alternate assessments into teacher evaluation systems. Some alternate assessments do not measure student achievement and growth in a standard way;¹¹⁷ therefore, it would be difficult to determine whether a student made appropriate achievement gains that would indicate whether a teacher is “effective.”¹¹⁸ Due to the complexity of assessing teacher effectiveness, Congress may want to require ED to conduct a pilot study or to provide guidance on how to incorporate special education teachers into teacher evaluation systems. Because of the difficulties associated with evaluating special education teachers based on “teacher effectiveness,” another model may be to evaluate special education teachers based on whether or not their students achieve their IEP goals. An evaluation system based on IEP goals may be more relevant for special education teachers; however, such an evaluation system may complicate teacher evaluation because it would set up different systems of evaluating general education teachers and special education teachers. It may also provide an incentive for IEP teams to set lower goals for students with disabilities that seem more attainable and may potentially reduce the likelihood that IEP teams set ambitious goals that could lead to increased achievement for students with disabilities. Furthermore, because special education teachers are required to be part of the IEP team, it may be considered a conflict of interest if special education teachers are permitted to influence the IEP goals against which they would be evaluated.¹¹⁹

¹¹⁶ See CEC comments, available at http://www.cec.sped.org/Content/NavigationMenu/PolicyAdvocacy/CECPolicyResources/NoChildLeftBehind/CEC_2010_ESEA_Policy_WEB.pdf; see National Coalition on Personnel Shortages in Special Education and Related Services comments, available at http://specialedshortages.org/PersonnelShortagesCoalitionESEARRecommendations5_10_10.pdf.

¹¹⁷ For example, some alternate assessments use checklists, teacher observations, or portfolios to document student achievement.

¹¹⁸ NASDSE recommends that, “if teachers are to be rated on their effectiveness in terms of student achievement, consideration must be given to the diversity of their students and their individual growth (e.g., using a growth model) so that teachers who are making gains with challenging students as well as those students who may not make a year’s growth in a year’s time are recognized for the accomplishments of their students.” See NASDSE comments, available at http://nasdse.org/Portals/0/Documents/Gov%20Relations/ESEA_reauthorization_principles_2010.pdf.

¹¹⁹ If special education teachers are evaluated based on the achievement of IEP goals, it may be necessary for Congress to include requirements in the IEP process of IDEA that would prevent IEP teams from setting lower goals for students with disabilities.

Appendix A. Selected Acronyms

Table A-1. Glossary

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|--------------------------------|---|
| AA-AAS | Alternate Assessment based on Alternate Achievement Standards |
| AA-MAS | Alternate Assessment based on Modified Achievement Standards |
| APR | Annual Performance Report |
| ARRA | American Recovery and Reinvestment Act |
| AYP | Adequate Yearly Progress |
| CEIS | Coordinated Early Intervening Services |
| ED | U.S. Department of Education |
| ESEA | Elementary and Secondary Education Act |
| FAPE | Free Appropriate Public Education |
| HOUSSE | High Objective Uniform State Standard of Evaluation |
| IDEA | Individuals with Disabilities Education Act |
| IEP | Individualized Education Program |
| LEA | Local Educational Agency |
| LEP | Limited English Proficient |
| MOE | Maintenance of Effort |
| NCLB | No Child Left Behind |
| RTTT | Race to the Top |
| RTTT Assessment Program | Race to the Top Assessment Program |
| SPP | State Performance Plan |

Appendix B. IDEA, Part B Indicators

Table B-1. IDEA, Part B State Performance Plan (SPP) and Annual Performance Report (APR)

Part B Indicator Measurement Table

Monitoring Priorities and Indicators

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| 1. Percent of youth with IEPs ^a graduating from high school with a regular diploma. (20 U.S.C. 1416(a)(3)(A)) |
| 2. Percent of youth with IEPs dropping out of high school. (20 U.S.C. 1416(a)(3)(A)) |
| 3. Participation and performance of children with IEPs on statewide assessments: A. Percent of the districts with a disability subgroup that meets the state's minimum "n" size that meet the state's AYP ^b targets for the disability subgroup. B. Participation rate for children with IEPs. C. Proficiency rate for children with IEPs against grade level, modified, and alternate academic achievement standards. (20 U.S.C. 1416(a)(3)(A)) |
| 4. Rates of suspension and expulsion: A. Percent of districts that have a significant discrepancy in the rate of suspensions and expulsions of greater than 10 days in a school year for children with IEPs; and B. Percent of districts that have: (a) a significant discrepancy, by race or ethnicity, in the rate of suspensions and expulsions of greater than 10 days in a school year for children with IEPs; and (b) policies, procedures or practices that contribute to the significant discrepancy and do not comply with requirements relating to the development and implementation of IEPs, the use of positive behavioral interventions and supports, and procedural safeguards. (20 U.S.C. 1416(a)(3)(A); 1412(a)(22)) |
| 5. Percent of children with IEPs aged 6 through 21 served: A. Inside the regular class 80% or more of the day; B. Inside the regular class less than 40% of the day; and C. In separate schools, residential facilities, or homebound/hospital placements. (20 U.S.C. 1416(a)(3)(A)) |
| 6. Percent of children aged 3 through 5 with IEPs attending a: A. Regular early childhood program and receiving the majority of special education and related services in the regular early childhood program; and B. Separate special education class, separate school or residential facility. (20 U.S.C. 1416(a)(3)(A)) |
| 7. Percent of preschool children aged 3 through 5 with IEPs who demonstrate improved: A. Positive social-emotional skills (including social relationships); B. Acquisition and use of knowledge and skills (including early language/ communication and early literacy); and C. Use of appropriate behaviors to meet their needs. (20 U.S.C. 1416 (a)(3)(A)) |

Monitoring Priorities and Indicators

8. Percent of parents with a child receiving special education services who report that schools facilitated parent involvement as a means of improving services and results for children with disabilities.

(20 U.S.C. 1416(a)(3)(A))

9. Percent of districts with disproportionate representation of racial and ethnic groups in special education and related services that is the result of inappropriate identification.

(20 U.S.C. 1416(a)(3)(C))

10. Percent of districts with disproportionate representation of racial and ethnic groups in specific disability categories that is the result of inappropriate identification.

(20 U.S.C. 1416(a)(3)(C))

11. Percent of children who were evaluated within 60 days of receiving parental consent for initial evaluation or, if the State establishes a timeframe within which the evaluation must be conducted, within that timeframe.

(20 U.S.C. 1416(a)(3)(B))

12. Percent of children referred by Part C prior to age 3, who are found eligible for Part B, and who have an IEP developed and implemented by their third birthdays.

(20 U.S.C. 1416(a)(3)(B))

13. Percent of youth with IEPs aged 16 and above with an IEP that includes appropriate measurable postsecondary goals that are annually updated and based upon an age appropriate transition assessment, transition services, including courses of study, that will reasonably enable the student to meet those postsecondary goals, and annual IEP goals related to the student's transition services needs. There also must be evidence that the student was invited to the IEP Team meeting where transition services are to be discussed and evidence that, if appropriate, a representative of any participating agency was invited to the IEP Team meeting with the prior consent of the parent or student who has reached the age of majority.

(20 U.S.C. 1416(a)(3)(B))

14. Percent of youth who are no longer in secondary school, had IEPs in effect at the time they left school, and were:

A. Enrolled in higher education within one year of leaving high school.

B. Enrolled in higher education or competitively employed within one year of leaving high school.

C. Enrolled in higher education or in some other postsecondary education or training program; or competitively employed or in some other employment within one year of leaving high school.

(20 U.S.C. 1416(a)(3)(B))

15. General supervision system (including monitoring, complaints, hearings, etc.) identifies and corrects noncompliance as soon as possible but in no case later than one year from identification.

(20 U.S.C. 1416 (a)(3)(B))

16. Percent of signed written complaints with reports issued that were resolved within 60-day timeline or a timeline extended for exceptional circumstances with respect to a particular complaint, or because the parent (or individual or organization) and the public agency agree to extend the time to engage in mediation or other alternative means of dispute resolution, if available in the state.

(20 U.S.C. 1416(a)(3)(B))

17. Percent of adjudicated due process hearing requests that were adjudicated within the 45-day timeline or a timeline that is properly extended by the hearing officer at the request of either party or in the case of an expedited hearing, within the required timelines.

(20 U.S.C. 1416(a)(3)(B))

18. Percent of hearing requests that went to resolution sessions that were resolved through resolution session settlement agreements.

(20 U.S.C. 1416(a)(3)(B))

Monitoring Priorities and Indicators

19. Percent of mediations held that resulted in mediation agreements.

(20 U.S.C. 1416(a)(3)(B))

20. State reported data (618 and State Performance Plan and Annual Performance Report) are timely and accurate.

(20 U.S.C. 1416(a)(3)(B))

Source: IDEA, Part B Measurement Indicator table from the U.S. Department of Education (<http://www2.ed.gov/policy/speced/guid/idea/bapr/2010/b2-1820-0624bmeastable111210.pdf>).

- a. Individualized Education Program.
- b. Adequate Yearly Progress.

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